

DIVISION II

KAREN R. BAKER, Judge
ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

CACR06-673

JANUARY 31, 2007

JOE JONES

APPEAL FROM THE PULASKI COUNTY
CIRCUIT COURT
[CR2005-4059]

APPELLANT

v.

HONORABLE JOHN W. LANGSTON,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant, Joe Jones, was convicted of commercial burglary, a Class C felony, and theft of property, a Class A misdemeanor, by a jury in Pulaski County Circuit Court. He was sentenced as a habitual offender to fifteen years' imprisonment in the Arkansas Department of Correction. Appellant's sole argument on appeal is that the trial court erred in denying his motion to suppress. He specifically asserts that he did not make a voluntary, knowing, or intelligent waiver of his *Miranda* rights as he was under the influence of pain medication. We find no error and affirm.

On August 30, 2005, as appellant was attempting to illegally enter a downtown Little Rock law firm, he was shot in the left side of his body. Appellant was taken to the hospital because of his injuries, where it was discovered that the bullet had traveled through his spleen, gall bladder, stomach, liver, and pancreas. As a result, appellant's spleen, gall bladder, and a portion of his pancreas had to be removed.

On September 6, 2005, appellant was released from the hospital. Around 2:00 p.m. that day,

Detective Mark Knowles took a recorded statement from appellant. Detective Eric Knowles was also present in the room when appellant was read his *Miranda* rights. Prior to taking the statement, Detective Mark Knowles read everything on the *Miranda* rights form to appellant. He also advised him that at any time appellant could decide not to answer any questions. Appellant initialed each of the individual rights and signed the bottom of the *Miranda* form. Appellant also signed a waiver of those rights. He did not, at any time, invoke his right to cease the questioning by Detective Mark Knowles. Detective Mark Knowles testified that appellant did not appear to be under the influence of drugs or alcohol. He also did not appear disoriented or confused, and his speech was coherent. Detective Eric Knowles also testified that appellant was alert, his speech was clear, and he did not appear to be under the influence of drugs or alcohol.

Detective Mark Knowles then began the recorded portion of the interview. However, once the recording began, he explained once again appellant's *Miranda* rights. Appellant acknowledged that he understood his rights and that he waived those rights. The recording was played in open court during the suppression hearing. The following dialogue took place between appellant and Detective Mark Knowles at the beginning of the recorded statement:

KNOWLES: Today's date is September the 6th. The year 2005. It currently is 1408 hours. This interview is being conducted at the Little Rock Police Department's Downtown Detective Division inside interview room No. 4. Present for this interview is myself, Detective Mark Knowles. Being interviewed is Joe Jones, black male, date of birth, 10-8-68. It's in reference to Little Rock Police Department incident number 2005-102454, a uh, burglary that occurred at 312 South Pulaski. Joe?

JONES: Yes, sir.

KNOWLES: If you could sit up for me just a second.

JONES: I'm trying to.

KNOWLES: Okay. I have in front of you a Little Rock Police Department *Miranda* Rights

form, numbered questions one through five.

JONES: Yes.

KNOWLES: It says you have a GED, and you can read and write. Is that correct?

JONES: Yes.

KNOWLES: Is this your signature stating that you understand your rights?

JONES: Yes.

KNOWLES: And below is the waiver of rights. Is that also your signature stating you understand that waiver?

JONES: Yes.

. . . .

In regard to appellant's physical and mental state at the time of the interview, Detective Knowles testified on cross examination that appellant was in the best possible condition at the time of the interview, considering that he had suffered a gunshot wound a week before. When Detective Knowles was questioned as to why he asked appellant to "sit up" at the beginning of the interview, Detective Knowles testified that the reason was to insure that the recorder would be able to pick up appellant's voice.

Appellant testified at the suppression hearing that he was on pain medication, administered intravenously, during the days following his surgery. He testified that he was still receiving pain medication on the day he was released from the hospital and interviewed by Detective Knowles. Appellant could not, however, recall specifically *when* he received pain medication that day. He testified that he remembered his mother giving him a t-shirt and that he left the hospital room in a wheelchair. He stated that he was taken to the police vehicle, and that he fell asleep in the back seat on the way to the police station. Once the police vehicle arrived at the police station, appellant remembered waking up, getting out of the vehicle, and being escorted to the Detective Division. He

testified that he did not, however, remember Detective Mark Knowles reading him his rights or signing any form related to the waiver of his rights.

Appellant's mother, Mabel Jones, testified that appellant received pain medication on September 6, 2005, before he was released from the hospital. She testified that on the day he was released, appellant was "bent over" and was having trouble walking. She stated that appellant seemed coherent, but did not seem like "normal Joe." Ms. Jones expressed concern about appellant receiving his pain medication after he left the hospital, and the officer assured her that appellant would continue to receive his medications. Appellant was then taken to the police vehicle. She testified that the officer assisted appellant as he was placed in the back of the vehicle, and appellant was then taken to the police department for an interview.

On appeal, appellant argues that the trial court erred when it denied appellant's motion to suppress appellant's statement. Specifically, appellant had just been released from the hospital and had been under the influence of painkilling narcotics for six days; therefore, appellant's waiver of his *Miranda* rights was not voluntary, knowing, or intelligent.

In reviewing a circuit court's refusal to suppress a confession, the court makes an independent determination based upon the totality of the circumstances. *Grillot v. State*, 353 Ark. 294, 107 S.W.3d 136 (2003). A statement made while in custody is presumptively involuntary, and the burden is on the State to prove by a preponderance of the evidence that a custodial statement was given voluntarily and was knowingly and intelligently made. *Jones v. State*, 344 Ark. 682, 42 S.W.3d 536 (2001) (citing *Smith v. State*, 334 Ark. 490, 974 S.W.2d 427 (1998)). In order to determine whether a waiver of *Miranda* rights is voluntary, the court looks to see if the confession was the product of free and deliberate choice rather than intimidation, coercion, or deception. *Id.* (citing *Diemer v. State*, 340 Ark. 223, 9 S.W.3d 490 (2000)). Our supreme court has consistently held that relevant factors in

determining whether a confession was involuntary are age, education, and the intelligence of the accused as well as the lack of advice as to his constitutional rights, the length of detention, the repeated and prolonged nature of questioning, and the use of mental or physical punishment. *Holloway v. State*, 363 Ark. 254, ___ S.W.3d ___ (2005) (citing *e.g.*, *Pilcher v. State*, 355 Ark. 369, 136 S.W.3d 766 (2003); *Sanford v. State*, 331 Ark. 334, 962 S.W.2d 335 (1998)). Other relevant factors in considering the totality of the circumstances include the statements made by the interrogating officer and the vulnerability of the defendant. *Id.* (citing *Pilcher, supra*; *Hood v. State*, 329 Ark. 21, 947 S.W.2d 328 (1997)). Our supreme court in *Holloway v. State*, 363 Ark. at 260, ___ S.W.3d at ___, also stated:

When an appellant claims that his confession was rendered involuntary because of drug or alcohol consumption, the level of his comprehension is a factual matter to be resolved by the circuit court. *Grillot, supra*; *Jones, supra*. In testing the voluntariness of one who claims intoxication at the time of waiving his rights and making a statement, this court determines whether the individual was of sufficient mental capacity to know what he was saying-capable of realizing the meaning of his statement-and that he was not suffering from any hallucinations or delusions. *Grillot, supra*; *Jones, supra*. See also *U.S. v. Harden*, 480 F.2d 649 (8th Cir. 1973) (stating that a confession made by a person under the influence of drugs is not per se involuntary).

Appellant's sole argument on appeal is that the trial court erred in failing to suppress his statement because he did not make a voluntary, knowing and intelligent waiver. Appellant's argument is without merit. Appellant relies on the fact that he had just been released from the hospital and that he had received pain medication, administered intravenously, during the six days following his surgery. He testified that while he remembered details from earlier in the day, he did not remember Detective Mark Knowles reading him the *Miranda* Rights form or waiving those rights. Appellant also relies on the fact that Detective Mark Knowles asked appellant to "sit up" just before his interview began.

Despite appellant's arguments, both Detective Mark Knowles and Detective Eric Knowles

testified that, at the time appellant's recorded statement was made, appellant did not appear to be under the influence of drugs or alcohol. Detective Mark Knowles testified that he read each of the rights listed on the *Miranda* Rights form to appellant and that appellant initialed each individual right, signed the *Miranda* Rights form, and signed the waiver of rights portion of the form. Detective Knowles testified that appellant did not, at any time, ask for an attorney or indicate that he wanted to stop the interview. Detective Knowles acknowledged that he asked appellant to "sit up" so that the recorder could pick up appellant's voice, and he testified that at that time, appellant appeared to be in good condition considering the circumstances. The evidence further showed that appellant was given pain medication between 9:00 a.m. and 11:00 a.m. on September 6, 2005, and the interview was not conducted until around 2:00 p.m. on that day. The transcript of the recording supports the trial court's finding that appellant was coherent and uninhibited at the time of the interview and that appellant was not under the influence of drugs or alcohol. Appellant gave a detailed narrative concerning his activities on the day of the burglary up until the time he was shot. Finally, the trial court had the opportunity to hear and evaluate the taped recording of the interview.

The trial court is not required to believe the testimony of any witness, especially the self-interested testimony of the defendant. *Jones, supra*. The trial court clearly believed the testimony of the officers, not the appellant, and this court defers to the superior position of the trial judge in matters of credibility. *Id.* Based on the foregoing evidence, we find that appellant's waiver of his *Miranda* rights was voluntary, knowing, and intelligent. Therefore, the trial court did not err in denying the motion to suppress appellant's statement.

Affirmed.

GLADWIN and BIRD, JJ., agree.